

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

**FLOYD H. LINDSAY**  
**Plaintiff**

**vs.**

**WANDA TURNER**  
**Defendant**

**: CIVIL ACTION**

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**: NO. 08-00622**

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**FACTS AND PROCEDURAL HISTORY**

This matter comes before the Court by way of Plaintiff's Motion for Summary Judgment. In 2006, Plaintiff, Floyd H. Lindsay filed a pro se Landlord/Tenant Complaint against Defendant, Wanda Turner, in order to secure possession and back rent for an apartment rented by Plaintiff to Defendant at 61 Back Street, Montoursville, PA 17754 (hereinafter "Premises"). Defendant then filed a Counterclaim against Plaintiff, alleging Breach of an Implied Warranty of Habitability and a claim under the Unfair Trade Practices and Consumer Protection Act.

A trial was conducted on November 1, 2007, before the Honorable Nancy Butts. At trial, Judge Butts entered an Opinion and Order in which she entered a money judgment in favor of Defendant on her Counterclaim and abated Defendant's claim for back rent. Plaintiff now seeks to resolve the issue of whether Defendant may be lawfully ejected from the Premises

**DISCUSSION**

Plaintiff argues that at the November 1, 2007 trial, the Honorable Judge Nancy Butts failed to rule on the ejectment claim against Defendant and Plaintiff is still entitled to immediate possession of the Premises.

At trial, the Court found that pursuant to an oral lease, the Defendant paid a monthly rent of \$250 to Plaintiff. The Honorable Judge Butts held that Defendant's rent would be abated due to the conditions of the Premises. Defendant argues that because at trial Judge Butts abated her rent to \$0 a month, due to the conditions at the Premises, she is not required to pay rent until Plaintiff brings Premises up to the standards the law expects under the Warranty of Habitability. Defendant admitted at deposition that she has not paid rent since October of 2007. Defendant admitted in deposition that she received a Notice to Quit in January of 2008. These facts are undisputed.

“A landlord desirous of repossessing real property from a tenant...may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely (1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.” Notice to Quit. 68 P.S. 250.501-A(a).

Defendant concentrates her argument on subsection (3) by stating that because the rent due is \$0 the statute is not applicable to her. In Judge Butts' opinion she cited to the Pennsylvania Supreme Court which held, “...if the landlord totally breached the implied warrant of habitability, the tenant's obligations to pay rent would be abated in full – the action for possession would fail because there would be no unpaid rent.” Pugh v. Holmes, 405 A.2d 897, 907 (Pa. 1979). In holding as it did, the Pugh Court cited to Javins v. First National Realty Corp., 138 U.S.App.D.C. 369, 380, 428 F.2d 1082-83 (1970). In a footnote to its holding, the Javins Court stated, “As soon as the landlord made the necessary repairs rent would again become due. Our holding, of course, affects

only eviction for nonpayment of rent. **The landlord is free to seek eviction at the termination of the lease** or on any other legal ground.” Id. at 1083. (Emphasis Added)

Under subsection (a)(1) of the Pennsylvania Notice to Quit statute, a landlord may evict a tenant upon the termination of a term of the tenant. Under subsection (c), “In case of the expiration of a term ... where the lease is for any term of less than one year or for an indeterminate time, the notice shall specify that the tenant shall remove within thirty days from the date of service thereof...” 68 P.S. 250.501-A(c). The Defendant was on a month to month lease with landlord. Defendant was served with a Notice to Quit on January 15, 2008. The Notice to Quit stated that the term ended on February 15, 2008 and that Defendant should turn over possession of the Premises before that day. Giving Defendant the benefit of the doubt that the month to month lease term actually ended at the end of each month rather than the 15<sup>th</sup>, the Defendant had until the last day of February to turn over possession of the premises. Defendant did not turn over to Plaintiff possession of the Premises.

Defendant rightfully asserts that Plaintiff must be entitled to immediate possession of the property in order to be entitled to ejectment. Brennan v. Shore Brothers, 380 Pa. 283, 110 A.2d 401 (1955). Therefore, Plaintiff was well within his legal rights to evict Plaintiff at the end of February 2008 in accordance with 68 P.S. 250.501A(a)(1) and (c) when he became entitled to immediate possession. The abatement of Defendant’s rent has no bearing over whether Plaintiff could evict Defendant due to an expiration of her lease term.

Summary Judgment may be properly granted “...when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record,

and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Rauch v. Mike-Mayer, 783 A.2d 815, 821 (Pa. Super. 2001). The movant bears the burden of proving that there are no genuine issues of material fact. Id. In determining a motion for summary judgment, the court must examine the record “in the light most favorable to the non-moving party, accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.” Godlewski v. Pars Mfg. Co., 597 A.2d 106, 107 (Pa. Super. 1991). Summary judgment may be properly entered if the evidentiary record “either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense.” Rauch at 823-24. Here it is clear that the lease has been terminated and Plaintiff is entitled to possession of Premises.

**ORDER**

AND NOW this \_\_\_ day of November, Plaintiff's Motion for Summary Judgment in Ejectment is hereby GRANTED. Defendant, Wanda Turner, shall surrender possession of 61 Back Street, Montoursville, Lycoming County, Pennsylvania, 17754, to Plaintiff in no more than 30 days from the date of this order.

By The Court,

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Judge Richard A. Gray

Cc: William P. Carlucci, Esquire  
Matthew Zeigler, Esquire  
Gary Weber, Esquire